

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JENNIFER A SIMMONS
Claimant

APPEAL NO. 08A-UI-02324-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CARGILL MEAT SOLUTIONS
CORPORATION**
Employer

OC: 01/27/08 R: 03
Claimant: Respondent (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Cargill Meat Solutions Corporation filed a timely appeal from an unemployment insurance decision dated February 22, 2008, reference 01, that allowed benefits to Jennifer A. Simmons. After due notice was issued, a telephone hearing was held March 24, 2008 with Assistant Human Resources Manager Lauri Elliott participating for the employer. Exhibit One was admitted into evidence. Ms. Simmons did not respond to the hearing notice by providing a telephone number at which she could be contacted. The administrative law judge takes official notice of agency benefit payment records.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Jennifer A. Simmons was employed by Cargill Meat Solutions Corporation from January 3, 2008 until she was discharged January 29, 2008. On a pre-employment medical questionnaire, Ms. Simmons stated incorrectly that she had never suffered any fractured, dislocated or broken bones. She later admitted that she had broken her hand previously. Had the employer known of this information, it would have investigated further to see if the job for which Ms. Simmons applied was appropriate given her medical condition. The company has a policy which provides for discharge for falsifying company records, including employment applications.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The employer has the burden of proof. See Iowa Code section 96.6-2. The employer has provided evidence establishes a violation of a company rule concerning falsification of company records. Furthermore, 871 IAC 24.32(6) provides that a willfully and deliberately false statement on an application for work form that exposes the employer to legal liabilities is considered to be an act of misconduct. Further injury to that hand could have exposed the employer to liability for a workers' compensation injury. The evidence establishes misconduct. Benefits are withheld.

The administrative law judge notes that the claimant has neither requested nor received unemployment insurance benefits since filing a claim effective January 27, 2008.

DECISION:

The unemployment insurance decision dated February 22, 2008, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/css